

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JAMES ST. LOUIS,	§
	§ No. 459, 2010
Defendant Below-	§
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware
	§ in and for Sussex County
STATE OF DELAWARE,	§ Cr. ID No. 0009015005
	§
Plaintiff Below-	§
Appellee.	§

Submitted: August 18, 2010

Decided: October 4, 2010

Before **BERGER, JACOBS** and **RIDGELY**, Justices.

ORDER

This 4th day of October 2010, upon consideration of the appellant's opening brief and the appellee's motion to affirm pursuant to Supreme Court Rule 25(a), it appears to the Court that:

(1) The defendant-appellant, James St. Louis, filed an appeal from the Superior Court's July 8, 2010 order denying his fourth postconviction motion pursuant to Superior Court Criminal Rule 61. The plaintiff-appellee, the State of Delaware, has moved to affirm the Superior Court's judgment

on the ground that it is manifest on the face of the opening brief that the appeal is without merit.¹ We agree and affirm.

(2) The record reflects that, in May 2001, St. Louis was found guilty by a Superior Court jury of Rape in the First Degree and Continuous Sexual Abuse of a Child in connection with the rape of his then 8-year old stepdaughter. He was sentenced to a total of 40 years of Level V incarceration, to be suspended after 22 years for decreasing levels of supervision. This Court affirmed St. Louis's convictions on direct appeal.² Since then, St. Louis filed three motions for postconviction relief, all of which were denied by the Superior Court. This Court affirmed the Superior Court's judgment in all three instances.³ In all three of his previous postconviction motions, St. Louis claimed, among other things, that a videotape of his stepdaughter being interviewed at the Child Advocacy Center should not have been shown to the jury.

(3) In this appeal from the Superior Court's denial of his fourth postconviction motion, St. Louis again claims that the videotape should not have been shown to the jury. This time he contends that, because the forensic interviewer's questions were impermissibly suggestive in violation

¹ Supr. Ct. R. 25(a).

² *St. Louis v. State*, Del. Supr., No. 323, 2001, Steele, J. (May 24, 2002).

³ *St. Louis v. State*, Del. Supr., No. 446, 2004, Steele, C.J. (Mar. 1, 2005); *St. Louis v. State*, Del. Supr., No. 165, 2008, Holland, J. (Dec. 18, 2008); *St. Louis v. State*, Del. Supr., No. 49, 2010, Jacobs, J. (May 18, 2010).

of Del. Code Ann. tit. 11, §3507, the statement should not have been admitted into evidence. Furthermore, he argues, the Superior Court should not have applied the procedural bars to his postconviction claim, but, rather, should have reached the merits of the claim under Rule 61(i)(5) due to the existence of a colorable claim of a miscarriage of justice.

(4) Section 3507 provides that “[i]n a criminal prosecution, the voluntary out-of-court prior statement of a witness who is present and subject to cross-examination may be used as affirmative evidence with substantive independent testimonial value.” As this Court recently reaffirmed,⁴ there are four foundational requirements for the admission of a witness’s statement pursuant to §3507 as well as the Sixth Amendment’s Confrontation Clause. First, the party offering the statement must examine the declarant regarding both the events perceived and the truthfulness of the statement itself.⁵ Second, the offering party must establish that the statement was voluntary, either on direct examination or on *voir dire*, and the judge must render an explicit determination of the issue before submitting the statement to the jury.⁶ Third, the declarant must be subject to cross-

⁴ *Woodlin v. State*, Del. Supr., No. 44, 2009, Holland, J. (July 22, 2010) (*en Banc*).

⁵ *Keys v. State*, 337 A.2d 18 (Del. 1975).

⁶ *Hatcher v. State*, 337 A.2d 30 (Del. 1975).

examination on the content of the statement as well as its truthfulness.⁷

Fourth, the statement must be offered into evidence no later than the conclusion of the direct examination of the declarant.⁸

(5) The record before us provides no support for St. Louis's claim that his stepdaughter's out-of-court statement was improperly admitted into evidence at his trial. To the contrary, those portions of the trial transcript attached to St. Louis's opening brief reflect that the prosecution fulfilled all of the proper foundational requirements for his stepdaughter's out-of-court statement. After carefully considering the issue, the trial judge made an explicit finding that the forensic interviewer's questions were not unduly suggestive and we find nothing in St. Louis's arguments or the record before us that would lead us to question that finding at this late stage. Because St. Louis has failed to demonstrate a miscarriage of justice, we conclude that the Superior Court properly denied St. Louis's postconviction claim as procedurally barred.

(6) It is manifest on the face of the opening brief that this appeal is without merit because the issues presented on appeal are controlled by

⁷ *Ray v. State*, 587 A.2d 439, 443 (Del. 1991) (citing *Johnson v. State*, 338 A.2d 124, 127 (Del. 1975)).

⁸ *Smith v. State*, 669 A.2d 1, 8 (Del. 1995).

settled Delaware law and, to the extent that judicial discretion is implicated, there was no abuse of discretion.

NOW, THEREFORE, IT IS ORDERED that the State's motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Jack B. Jacobs
Justice